

EXHIBIT 2



500 North Akard Street
Suite 3300
Dallas, TX 75201-3347

T +1.214.965.7700
F +1.214.965.7799
PerkinsCoie.com

John R. Hardin
JohnHardin@perkinscoie.com
D. +1.214.965.7743
F. +1.214.965.7793

December 26, 2019

VIA EMAIL: RL@LiebowitzLawFirm.com

Richard Liebowitz
Liebowitz Law Firm, PLLC
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
United States

**Re: *Berg v. M & F Western Products, Inc.*, Cause No 6:19-cv-418
(Litigation)**

Mr. Liebowitz,

We have reviewed the claims you filed against M & F Western Products, Inc. The claims are baseless. First, M & F Western developed its designs independently and began selling them well-before the alleged meeting with Berg in December 2016. Second, Berg is asserting copyright claims in design elements such as “beaded edges,” “jewels,” and “scrollwork” that are very common in buckle and cross designs and have been around for decades. Third, in prior litigation Mr. Berg stipulated that he “was not asserting copyright protection for the tapered beaded edge” in the designs at issue. *See Berg v. Symons*, 393 F. Supp. 2d 525, 533 (S.D. Tex. 2005). Accordingly, he has disclaimed at least one of the dominant design elements (and in some cases the only similarity) between his designs and M&F’s designs.

It is apparent to us that the Litigation was filed to extort a settlement. This case has the same fingerprints as the numerous cases you have filed (and been reprimanded and sanctioned for) in the Southern District of New York. *See e.g., Sands v. Bauer Media Group USA, LLC*, Cause No. 17-CV-9215 (S.D.N.Y. November 26, 2019) (“As Judge Furman recently observed, there is a growing body of law in this District devoted to the question of whether and when to impose

Richard Liebowitz
December 26, 2019
Page 2

sanctions on Mr. Liebowitz.”) (internal citations omitted). The Litigation asserts a copyright violation for basic and extremely common design elements that Berg does not own and in some cases has publicly disclaimed.



M & F Western intends to defend aggressively and will seek recovery of its attorneys’ fees and costs when it prevails.

M & F Western’s Designs at Issue All Predate the Alleged December 2016 Meeting

The Complaint alleges that “Carry” from M & F Western stopped by Mr. Berg’s booth at a December 2016 NRF retail trade show and expressed Mickey’s interest in buying a range of Mr. Berg’s designs for use by M & F Western. (¶ 10.) The Complaint further alleges that Mr. Berg declined, and that “sometime after December 2016”, M & F Western created their own products copying the Works. (*Id.* at ¶ 11-12.). However, all of the allegedly infringing designs were created before the December 2016 meeting. See **Exhibit A** showing that the designs in question were created before the alleged December 2016 meeting.

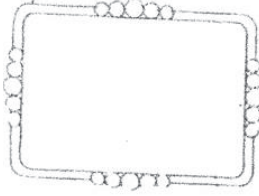
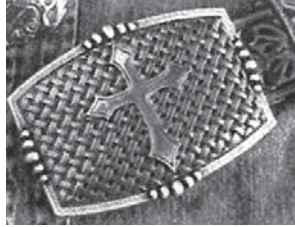
M & F Western Developed its Belt Buckle Designs Before Berg

Mr. Berg appears to claim copyright protection in a series of five beads (“Bead Design”) located along the compass points of the buckles as shown below.¹

Copyright Registration	Registered Work	M & F Western Product
VA 1-159-548 Date of creation: 2002 Date of publication: 6/1/2002		

¹ As you know, the circular and rectangular shapes of Mr. Berg’s designs are not protectable elements under copyright law. They are not original and are also functional.

Richard Liebowitz
December 26, 2019
Page 3



<p>A 1-159-548</p> <p>Date of creation: 2002</p> <p>Date of publication: 6/1/2002</p>		
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As an initial matter, there is no basis for your client's claim that the Bead Design is his copyrightable contribution to the world of buckle design. Mr. Berg's Bead Design was addressed in a prior case involving copyright and trade dress infringement allegations against his ex-wife. *See Berg v. Symons*, 393 F. Supp. 2d 525 (S.D. Tex. 2005). As the case made clear, tapered beaded edges used in buckle designs did not originate with Mr. Berg.² Indeed, Mr. Berg stipulated in the case that he "was not asserting copyright protection for the tapered beaded edge" in the designs at issue, thus, it is inconsistent, at best, for you to make such allegations in the Litigation. *Id.* at 533.

In any event, Mr. Berg's belt buckle claim fails because M & F Western's buckles were designed before Berg's. M & F Western acquired the designs when it purchased the Crumrine Buckle Company in 2007. Crumrine has used beaded edges in its designs since at least the mid-1990s, long before the creation dates asserted by Berg. Indeed, there can be no mistake that the alleged infringing M & F Western design is the same as or substantially similar to the 1995 Crumrine design shown below:

² We have attached as **Exhibit B** additional images showing that the use of beaded edges is ubiquitous in the world of belt buckle designs.

Richard Liebowitz
December 26, 2019
Page 4

Crumrine 1995	Alleged Infringing M & F Western Design
	

Therefore, there is no basis for your client's copyright infringement claim given that the Crumrine design predated the publication of your client's Works.



Berg's Cross Designs are Not Original to Berg and M&F Didn't Copy Them

Cross designs (typically associated with Christianity) are ubiquitous in jewelry and date back more than 2000 years. As discussed above and shown in **Exhibit A**, the allegedly infringing cross designs were all created before the meeting with Mr. Berg in December 2016. Further, in any event, the allegedly infringing designs are different in important ways from Mr. Berg's designs. First, the use of beads at the end of the arms of Mr. Berg's cross designs are not protectable subject matter under copyright law based on the historic use of such design elements. Indeed, this issue was addressed in Mr. Berg's case against his ex-wife, wherein the court states that "Berg was not the first to use a black background, more than one color gold, or vine and leaf scrollwork, or place beads on the edge of a buckle or piece of jewelry." *Berg v. Symons*, 393 F. Supp. 2d at 532.





In addition, **Exhibit C** contains examples of cross designs that are highly similar to your client's designs. For example, the use of scrollwork, circles around a central element (i.e., at the intersection of the arms of the cross), flowers and gems are not your client's original contribution to cross designs. As a result of the pre-existing designs, any rights your client may have in the cross designs are extremely thin, if he has any at all. Thus, the differences between your client's designs and our client's designs are fatal to your client's claims.

Richard Liebowitz
December 26, 2019
Page 5

Please see the table below highlighting the important differences between your client's cross designs and those of our client.

Copyright Registration	Registered Work	M & F Western Product	Comments/Differences
VA 1-091-617			<p>M & F Western uses different stylization of the centerpiece of the cross, including a silver lariat forming a prominent circle around the rosette as well as different scrollwork. Further, the centerpiece in M & F Western's design has a border, which is entirely absent from the registered design.</p> <p>In addition, please see <u>Exhibit C</u> for examples of crosses that are highly similar to your client's design.</p>

Richard Liebowitz
December 26, 2019
Page 6

VA 1-091-617			<p>The shaping of the gold scrollwork differs from that of Mr. Berg's design. In particular, the scroll in the M&F Western design starts from the center flower and moves towards the end of the four arms of the cross, with an extra curl at the bottom and top of the cross. In addition, the arms of the M&F Western cross have more embellishments on the scroll and the flower designs are also different. The shape of the M&F Western cross is also different in that the angle created by the arms is more acute (or tighter) than with the Berg design.</p> <p>In addition, please see <u>Exhibit C</u> for examples of crosses that are highly similar to your client's design.</p>
VA 1-229-288			<p>The shaping of the central rosette design and the stylization of the silver scrollwork differ in important ways between the two pieces, including with the scrolls twisting in different directions between the respective</p>

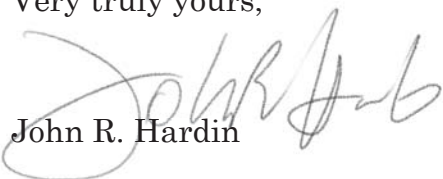
Richard Liebowitz
December 26, 2019
Page 7

			<p>pieces. Further, the angles formed by the arms of the M & F cross are not right angles; each is slightly acute. By contrast, the arms on the cross shown in the noted registration form right angles.</p> <p>In addition, please see <u>Exhibit C</u> for examples of crosses that are highly similar to your client's design.</p>
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We are confident that discovery will reveal even more evidence showing the baselessness of Mr. Berg's claims.

In light of the foregoing, it would be prudent for Mr. Berg to dismiss his suit now before you and he incur additional legal exposure. If he does so by the first of year, M & F Western will agree not to seek sanctions or fees for the costs it has incurred to date.

Very truly yours,


John R. Hardin